LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court, U. S.
FILED
NOV 23 1973
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1973

No. 73-814

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

Petition for Writ of Certiorari To The Supreme Court of Utah

WALKER E. ANDERSON
425 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Petitioner

INDEX

Page

DECISION BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

CONSTITUTIONAL PROVISIONS INVOLVED 4

STATEMENT OF CASE 5

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW 9

REASONS FOR GRANTING THE WRIT 11

POINT I

THE COURT BELOW IGNORED THE 4th, 5th, 6th and 14th AMENDMENTS AND MIRANDA AND HAS THEREBY DENIED TO PETITIONER ALL OF HIS RIGHTS THEREUNDER 11

POINT II

WHEN IN CUSTODY IN COURT PETITIONER WAS ENTITLED TO COUNSEL AND PRIOR NOTICE OF ANY SUCH PROCEEDINGS 15

CONCLUSION 17

CASES CITED

Bell v. Burson, 402 US 535 16

Boyd v. U.S., 116 US 616 ..... 12, 13, 15, 17

Brooks v. Tennessee, 406 US 605 ..... 13, 17

Burdeau v. McDowell, 256 US 465 13

INDEX (Continued)

Page

Carnley v. Cochran, 369 US 506 16
Escobedo v. Illinois, 378 US 478 ..... 10, 15, 17
Ferguson v. Georgia, 365 US 570 ..... 16, 17
Fuentes v. Shevin, 407 US 67 17
Griffin v. State of Calif., 380 US 609 ..... 14, 17
Hensley v. Municipal Court, 36 L ed 2d 294 ..... 16, 17
Hoffman v. U.S., 341 US 479 ..... 14, 17
In Re Contempt of Petty, 18 U2d 320 12
Kastigar v. U.S., 406 US 441 ..... 11, 17
Lynch v. Household Finance Corp., 405 US 538 17
Mallory v. Hogan, 378 US 1 ..... 12, 14, 17
Mason v. U.S., 244 US 362 ..... 12, 17
Mathis v. U.S., 391 US 1 14
Miranda v. Arizona, 384 US 436 ..... 2, 6, 9, 10, 13, 14, 17
Murphy v. Waterfront Commission, 12 L ed 2d 678 ..... 11, 17
Powers v. Taylor, 14 Utah 2d 118 12
Powell v. Alabama, 287 US 45 ..... 16, 17
PSC v. Wycoff, 97 L ed at 298 17
Re Gault, 387 US 1 11
Slochower v. Board of Higher Education of the City of N.Y., 350 US 551 14
Sniadach v. Family Finance Corp., 395 US 337 17
Spevack v. Klein, 385 US 511 14
State v. Byington, 114 Utah 388 11

INDEX (Continued)

Page

State Tax Commission of Utah v. Hoopes, 514 P2d 221 1

Ullman v. U.S., 350 US 422 14

U.S. v. Grundy, 3 Cranch 337, 2 Led 459 12

U.S. v. Peterson, 456 F2d 1135 16

U.S. v. Squeri, 398 F2d 785 13

U.S. v. U.S. Dist. Court, 407 US 297 13

Warden v. Hayden, 387 US 294 12

FEDERAL STATUTE

28 U.S.C. Sec. 1257(3) 2

U.S. CONSTITUTION

4th Amendment 2, 3, 4, 6, 7, 9, 10, 12, 15, 16

5th Amendment 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15

6th Amendment 3, 4, 10, 16

8th Amendment 3, 4, 14, 15

14th Amendment 2, 3, 4, 6, 7, 9, 10, 12, 14, 15, 16

RULES

U.S. Sup. Ct. Rules

Rule 19 (a) 3, 17

Rule 22 (1) 2

Utah Rules of Civil Procedure,

Rule 69 (k) 2, 3, 4, 10, 13

Rule 73 (a) 8

INDEX (Continued)

Page

APPENDICES

Appendix A A-1

Alternative Order of the District Court of Salt Lake County A-1

Appendix B B-1

Decision of the Supreme Court of Utah B-1

Appendix C C-1

Utah Rules of Civil Procedure, Rule 69 (k) C-1

IN THE

Supreme Court of the United States

October Term, 1973

No.....

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

Petition for Writ of Certiorari To The Supreme Court of Utah

Petitioner prays that a Writ of Certiorari issue to review the Decision of the Supreme Court of Utah filed August 21, 1973.

DECISION BELOW

The Decision is reported at 514 P2nd 221. A copy is appended, Appendix B. No decision was rendered upon the denial of Petitioner's Petition for Rehearing.

JURISDICTION

The Decision of the Supreme Court of Utah was filed August 21, 1973. The judgment of contempt rendered in the District Court was affirmed. A timely Petition for Rehearing was denied on September 21, 1973. Chief Justice Callister signed an Order, October 12, 1973, staying the Decision until December 21, 1973, in order to allow a Petition for Writ of Certiorari to be filed in this Court. This Petition for Certiorari was filed within 90 days after September 21, Rule 22 (1). This Court has jurisdiction under 28 U.S.C., Sec. 1257 (3). Petitioner asserted below and asserts here the deprivation of rights secured by the Constitution of the United States, and *Miranda v. Arizona,* 384 U.S. 436. The procedure below of Supplemental Proceedings by the State Tax Commission of Utah against Hoopes, based on the Utah Rules of Civil Procedure, Rule 69(k), is repugnant to the U. S. Constitution.

QUESTIONS PRESENTED

1. While petitioner is under Internal Revenue Service Intelligence Division investigation and the Revenue Agent and Special Agent gives him the *Miranda* warning,

   A. Can the Utah District Court order him into Court to testify in Supplemental Proceedings concerning his property?

   B. Can the Court order him to the witness stand to testify, after he declines to answer on the grounds that his answers will incriminate him, and he cites to the Court and relies on the 4th, 5th and 14th Amendments and *Miranda?*

C. Can the Court, after swearing him as a witness and he invokes the 4th, 5th and 14th Amendments and *Miranda,* fail to inquire as to his reasons for declining to answer?

D. Can the Court find him in contempt and punish him by fine and sentence for invoking the 4th, 5th and 14th Amendments and *Miranda?*

E. Can the Court require from him as a penalty a $200.00 Bond and then convert the Bond into a fine?

F. Can the District Court require from him a Supersedeas Bond, on appeal, of $2,483.32 and then the Supreme Court of Utah forfeit said amount by affirming the District Court?

2. Pursuant to a Bench Warrant arrest and while petitioner is "in custody" in Court, ***without Counsel,*** and ***without Notice and a Hearing*** can the Court find him in contempt and punish him with a fine and sentence?

3. Does the Supreme Court of Utah Decision do violence to defendant's ***rights and property*** under the 4th, 5th, 6th, 8th and 14th Amendments, and *Miranda?*

4. Is the Supreme Court of Utah Decision in accord with applicable Decisions of this Court? Rule 19 (a).

5. Is Rule 69(k) of the Utah Rules of Civil Procedure as ***used*** and ***applied*** by the Court below, repugnant to the U. S. Constitution?

CONSTITUTIONAL PROVISIONS INVOKED

U. S. CONST. 4th Amend.:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, * * *

U. S. CONST. 5th Amend.:

> * * * nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. CONST. 6th Amend.:

> * * * and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; * * * and to have the Assistance of counsel for his defence.

U. S. CONST. 8th Amend.:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U. S. CONST. 14th Amend. Sec. 1:

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the construction of the Utah Rules of Civil Procedure, Rule 69 (k), Appendix C, the text of which is appended.

STATEMENT OF CASE

The Internal Revenue Service Intelligence Division *directly* commenced the investigation of defendant prior to August, 1972 (R98 and R95).

The Revenue Agent and Special Agent gave defendant the *Miranda* warning in defendant's office during August 1972 (R98).

On August 31, 1972, the State Tax Commission of Utah prepared its Notice and Demand for Payment of Individual Income Tax (R44). On September 15, the Tax Commission prepared a Memorandum (R31) that a Warrant for Delinquent Income Tax was issued, and filed with the Clerk of Court (R47).

Based upon the Tax Warrant, the Tax Commission filed its Motion for an Order in Supplemental Proceedings in the District Court for Salt Lake County (R45), and an Order in Supplemental Proceedings was served on defendant, November 6, 1972 (R46).

Obeying the Order, defendant appeared in Court, *without Counsel,* on November 15, (R48) and his Motion to Dismiss (R39) was Denied (R63).

Defendant was *without Counsel* all through the District Court proceedings. He was *without Counsel* in the Utah Supreme Court through the filing of his Appellant's Brief.

An Attorney in the Courtroom below, called a friend of the Court by the Court, (R62) *informed* the Court,

* * * "This Court does not have jurisdiction over this matter." * * *

Prior to being sworn as a witness, defendant declined to answer on the grounds that he would incriminate himself (R48 through 63) and he cited to the Court and relied on the 4th, 5th and 14th Amendments and *Miranda v. Arizona, 384 U.S. 436.*

After being *directed* by the Court to be sworn as a witness (R63), defendant *again* declined to answer on the grounds that his answers would incriminate him (R64 and R65) and *again* he relied upon and cited to the Court the 4th and 5th Amendments (R65).

Without inquiring of the defendant as to his reasons for declining to answer, the Court ordered him to answer (R65) and *threatened* defendant with *contempt* and *jail sentence* and a *fine* if he did not answer the questions (R66).

* * * * *

"THE COURT: Well, this isn't a criminal case. *Miranda* applies to criminal cases.

MR. HOOPES: Well, according to some sections in the *Miranda,* it applies to all cases wherein an individual feels that his rights are possibly being denied.

THE COURT: You may differ with the Court, but those are the Court's views, that this *Miranda* applies to criminal matters where you could be incriminated personally, criminally." (R59).

* * * * *

"THE COURT: Well, show me a case that says that.

MR. HOOPES: In the 14th Amendment, it covers all cases under the State." (R60).

* * * * *

"A. I will decline to answer that on the grounds that my answer might tend to incriminate me." (R64).

* * * * *

"Q. Where do you bank?

A. I decline to answer that on the same grounds.

THE COURT: The Court orders you to answer." (R65).

* * * * *

"THE COURT: You must submit yourself to the orders of this Court, and if the Court orders you to answer a question, you must answer it or you will be held and found in contempt of this Court.

MR. HOOPES: What will happen to me if I am found in contempt?

THE COURT: The law provides for jail sentences and fines. This Court can enforce its orders." (R66).

* * * * *

"MR. HOOPES: Was the 4th and 5th Amendments of the Constitution denied also?

THE COURT: Your Motion was denied. Now I don't intend to argue further Mr. Hoopes. You will answer the questions of this Court or you will risk contempt and punishment by this Court. What was the question?" (R67).

The Court caused, coerced and forced answers to be given by defendant (R63 through R88).

The Court entered an Order on November 15, 1972 (R35). Defendant filed a Motion to Set Aside the Order (R33). On December 15, the Court Order denied defendant's Motion to Set Aside the Order (R19) and the Order is an Alternative Order, Appendix A.

The appeal to the Utah Supreme Court was filed by defendant December 22, 1972 (R17 and 18). On December 26 he filed his Supplement to Notice of Appeal (R14) and Application for Stay Pending Appeal (R15). Under the Utah Rules of Civil Procedure, (Rule 73a) defendant has one month in which to file his Notice of Appeal to the Utah Supreme Court.

On December 27, 1972, the District Court issued a *forthwith* Bench Warrant without bail (R13 and R7) and the Sheriff *arrested* and took defendant into *custody* and produced and presented him before the Court on December 27, *without Counsel* (R12).

Without notice of a hearing, and a hearing, the District Court *summarily* found defendant in *contempt of Court* "for failure to comply with a prior order of the Court", and fined him $200.00 and sentenced him to serve 30 days in jail (R12). However, the next day, on December 28, (R8) the District Court ordered that defendant "may post a $200.00 cash bond in lieu of payment of fine". Defendant, on December 29, posted a $200.00 cash Bond (R5). He also posted a $2,483.82 cash Supersedeas Bond (R6) as provided by the Alternative Order, Appendix A.

On January 3, 1973, *without* the parties being present or represented, the District Court by Minute Entry, based

upon the Court's Motion, Ordered that the "$200.00 cash bond heretofore posted *shall become a fine* due to defendant's contempt of Court" with the jail sentence suspended (R4). On January 12, the Court by Minute Entry granted defendant's Application For a Stay Pending Appeal (R3).

Defendant, *without Counsel,* timely filed his Appellant's Brief in the Utah Supreme Court. The Tax Commission timely filed its Brief.

On May 22, 1973, defendant retained Attorney Walker E. Anderson and he filed his Notice of Appearance and *personally* appeared before Chief Justice Callister. On Motion, the Chief Justice entered an Order that defendant had until June 19, 1973, in which to file and serve a Reply Brief of Appellant which Reply Brief was timely filed and served on June 15, 1973 (R97). Attorney Anderson fully prepared, planned and expected to *orally argue* the cases before the Utah Supreme Court (R98), however, the cases were Decided *without argument.*

A timely Petition for Rehearing was filed and served (R92 through 108) which was denied September 21, 1973.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BY BELOW

1. Defendant filed in the District Court his Motion to Dismiss and Memorandum of Law and Authorities, citing the 4th, 5th and 14th Amendments and Miranda vs. Arizona, 384 U.S. 436, (R 39 through R 43). *Prior* to being sworn as a witness, he argued the 4th, 5th & 14th Amendments & Miranda to the Court (R 49 through R 63). *After* being sworn as a witness, he

argued the same matters to the Court (R 64, 65, 66, 67 and 82).

2. Defendant cited (R 28) the Utah Rule of Civil Procedure 69 (k), Appendix C, as being repugnant to the Constitution.

3. "THE COURT: your Motion was denied" (R 67).

4. Defendant was *without Counsel* at all stages in the District Court proceedings, and *in custody* of the Sheriff when he was *summarily* found in contempt of Court (R 12).

> "A bench warrant having been issued pursuant to an Order of the Court of 12-27-72, the Sheriff having made his return and having produced said defendant into Court, the defendant, appearing *without Counsel,* * * * defendant is hereby found in Contempt of Court * * * and is fined $200.00 and is ordered to serve 30 days in the Salt Lake County Jail." * * * (R 12).

The 6th Amendment Right to Counsel was *urged* by defendant (R 100) but *not mentioned* in the Utah Supreme Court Decision, Appendix B.

5. In the defendant's Petition for Rehearing (R 98 through 108) the Utah Supreme Court was informed that its Decision struck down defendant's rights under the 4th, 5th, 6th and 14th Amendments (R 100) and that the Decision also violated the *terms and standards* of *Miranda vs. Arizona,* 384 U.S. 436, and *Escobedo vs. Illinois,* 378 U.S. 478. The Decision, Appendix B, makes no mention in any manner about the 4th, 5th, 6th and 14th Amendments. Neither does the Decision mention *Miranda* or *Escobedo.*

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT BELOW IGNORED THE 4th, 5th, 6th and 14th AMENDMENTS AND MIRANDA AND HAS THEREBY DENIED TO PETITIONER ALL OF HIS RIGHTS THEREUNDER.

A, B and C.

While being investigated by the IRS Intelligence Division (R95) and after receiving the Miranda warning by the Revenue & Special Agents (R98) the Court *erred* in Ordering petitioner to testify "concerning his property" in Supplemental Proceedings (R46). He was *without Counsel* at every step in the proceeding against him; and he was *marked* for criminal prosecution by IRS and the State (R95 and R98). The dangerous *coercive conditions* existed in the Court below.

The power to compel testimony is not absolute; and the 5th Amendment privilege can be asserted in *any proceeding,* civil or criminal, administrative or judicial, investigatory or adjudicatory, and protects against any disclosures that the witness *reasonably believes* could be used in a criminal prosecution or could *lead* to other evidence that might be so used; and the scope of the privilege against self incrimination is the same whether invoked in a State or Federal jurisdiction, *Kastigar v. U.S.,* 406 U.S. 441; *Re-Gault,* 387 U.S. 1; *State v. Byington,* 114 Utah 388.

The Constitutional privilege against self incrimination protects a *State witness* against incrimination under Federal as well as *State law, Murphy v. Waterfront Commission,* 12

L ed 2d 678. A witness in a civil case was not compelled to testify against his own interest, *U.S. v. Grundy,* 3 Cranch 337, 2 L ed 459. If a direct answer may criminate the witness, he must be the *sole judge* what his answer would be, *Mason v. U.S.,* 244 U.S. 362; *In Re Contempt of Petty,* 18 Utah 2d 320.

In *Mallory v. Hogan,* 378 U.S. 1, Mallory invoked his privilege against self incrimination and was adjudged *in contempt* and committed to prison. The U.S. Supreme Court reversed and held;

> (1) That the 14th Amendment makes the 5th Amendment privilege against self incrimination applicable to the States, and
>
> (2) The privilege, if properly invoked in a State proceeding, is governed by Federal Standards, and
>
> (3) That judged by Federal standards, the petitioner's claim of privilege should have been upheld.

The *essence* of contempt of Court partakes of the nature of *criminal proceedings* and the rights of one so accused shall be carefully safeguarded, *Powers v. Taylor,* 14 Utah 2d 118.

The Court below ignored these *standards.*

The 4th Amendment looks to the right of privacy, *Warden v. Hayden,* 387 U.S. 294. The 5th Amendment concludes the right to silence. Both the 4th and 5th Amendments nearly run into and mutually throw light upon each other. *Boyd v. U.S.,* 116 U.S. 616.

Today there can be no doubt that the 5th Amendment privilege is available *outside* of criminal Court proceedings and serves to protect persons *in all settings* in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. *Miranda v. Arizona,* 384 U.S. 436. A defendant's right against self incrimination entitles him to remain silent unless he chooses to speak in the unfettered exercise of his own free will and to suffer *no penalty* for such silence. *Brooks v. Tennessee,* 406 U.S. 605. *Mallory supra.*

The information that a taxpayer's returns are under audit gives sufficient *notice* of the possibility of criminal prosecution regardless of whether the agents contemplate civil or criminal action when they speak to him, *U.S. v. Squeri,* 398 F 2d 785.

The Court below erred in *forcing* petitioner to testify.

In *Boyd* supra, the *notice* to produce the invoice, the *order* by virtue of which it was issued, and the *law* which authorized the order. "were unconstitutional and void."

Therefore, the *Motion* (R45) and the *Order* in Supplemental Proceedings (R46) below and Utah Rule 69 (k), Appendix C, are unconstitutional and void. Baseless searches (R35) shall not proceed. *U.S. v. U.S. District Court,* 407 U.S. 297. The 5th Amendment privilege prohibits the Court and Government from *compelling* a person to incriminate himself. The privilege is intended to secure the witness from *compulsory testimony* against himself by *compulsory methods. Burdeau v. McDowell,* 256 U.S. 465.

In *Slochower v. Board of Higher Education of the City of New York,* 350 U.S. 551, this Court condemned the practice of *imputing* a sinister meaning to the exercise of a persons constitutional right under the 5th Amendment. According to *Ullman v. U.S.,* 350 U.S. 422, the privilege against self incrimination would be reduced to *hollow mockery* if its exercise could be taken as equivalent either to confession of guilt or a conclusive presumption of perjury; and the privilege serves to protect the innocent who otherwise might be ensnared by *ambiguous* circumstances. The Self Incrimination Clause of the 5th Amendment should not be watered down. *Spevack v. Klein,* 385 U.S. 511.

The Court below could have *at least* inquired of petitioner *why* he invoked the 5th Amendment and *why* he desired to remain silent. His privilege against self incrimination should have been sustained, *Hoffman v. U.S.,* 341 U.S. 479.

The Court below should have *applied* the *Miranda* warning to petitioner, *Mathis v. U.S.,* 391 U.S. 1. Mathis was in jail serving a *state sentence,* therefore, he should have been given the *Miranda* warning by the Revenue Agent.

D, E and F.

The Court below ignored the 8th Amendment and punished petitioner by *forcefully* taking his money.

The 14th Amendment secures to petitioner against State invasion and he should suffer *no penalty* for such silence, Mallory supra. *Penalty* means the imposition of any sanction which makes assertion of the 5th Amendment privilege *costly. Griffin v. State of California,* 380 U.S. 609. Forcing

a party to *answer* or *forfeit* a right or property violates the 5th Amendment, *Boyd v. U.S.,* 116 U.S. 616.

The wrongful *conversion* by the Court below of petitioners $200.00 Bond into a *"fine"* (R4 and5) deprives petitioner of his *property* without Due Process of Law, 5th and 14th Amendments; and is cruel and unusual punishment *inflicted* upon petitioner in violation of the 8th Amendment.

The wrongful *forfeit* by the Court below, Appendix B, of petitioners cash Supersedeas Bond of $2,483.82 (R6) deprives petitioner of his *property* without Due Process of Law, 5th and 14th Amendments; and is also cruel and unusual punishment *inflicted* upon petitioner in violation of the 8th Amendment.

Taking petitioner's money is also a *wrongful seizure* and *confiscation* in violation of the 4th Amendment.

POINT II

WHEN IN CUSTODY IN COURT PETITIONER WAS ENTITLED TO COUNSEL AND PRIOR NOTICE OF ANY SUCH PROCEEDINGS.

Petitioner was "in custody" of the Court by the Order in Supplemental Proceedings (R46); and he was "in custody" of the Sheriff (R7) when he was *produced* before the Court (R12); and he was *without Counsel.* These were circumstances which were inherently compelling compulsive pressures. His freedom of action was *totally* impaired.

Escobedo was denied his rights to assistance of Counsel. *Escobedo v. Illinois,* 378 U.S. 478. The *hearing* required by

the Due Process Clause must be "meaningful" and appropriate to the nature of the case, *Bell v. Burson,* 402 U.S. 535.

In *Hensley v. Municipal Court,* 36 L ed 2d 294, the petitioner having been released on his own recognizance, was "in custody" since (1) he was subject to *restraint* not shared by the public generally and, (2) there was unusual and substantial *impairment* of his liberty.

The same restraint (R12) and impairment applied to petitioner. He had the right under the 4th, 5th, 6th and 14th Amendments to resist the *unreasonable demanding search* of the Court (R48 through 89).

Petitioner did not have the *guiding hand* of Counsel at every step in the proceeding against him. *Ferguson v. Georgia,* 365 U.S. 570 and *Powell v. Alabama,* 287 U.S. 45. It is settled that where the assistance of Counsel is a constitutional requisite, the right to be furnished Counsel does not depend on a request. *Carnley v. Cochran,* 369 U.S. 506.

The Court below *recognized* all during the proceedings that petitioner was without Counsel (R12 and R62), yet the State Attorney General and the Court ignored this *need* and *right.* The Court could have *at least* asked petitioner if he wanted an attorney.

The Decision below violates petitioners rights as to Notice and a Hearing as spelled out in *U.S. v. Peterson,* 456 F2d 1135, where the 10th CA stated:

> "This case presents a clear-cut example of judicial abuse of the most basic aspects of procedural due process, i.e., reasonable notice and opportunity to prepare and be heard."

This Court has *denounced* the lack of Notice and Hearing. *Fuentes v. Shevin,* 407 U.S. 67. In *Lynch v. Household Finance Corp.,* 405 U.S. 538 and *Sniadach v. Family Finance Corp.,* 395 U.S. 337 the *procedure* without *Notice* and *Hearing* violated the Due Process Clause of the 14th Amendment.

Recourse is necessary to this Court by Certiorari *for relief* because the State Court below has *denied* to petitioner his Federal rights. *PSC v. Wycoff,* 97 L ed at 298.

CONCLUSION

Petitioner prays that the Petition for a Writ of Certiorari be granted. The Decision below *is not* in accord with applicable Decisions of this Court, Rule 19 (a), i.e. supra, Boyd, Brooks, Escobedo, Ferguson, Griffin, Hensley, Hoffman, Kastigar, Mallory, Mason, Miranda, Murphy and Powell.

Respectfully submitted,

WALKER E. ANDERSON
425 Newhouse Building
Salt Lake City, Utah 84111
Tel. No. 801 363-4541
Attorney for Petitioner